



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2013

Ms. Andrea D. Russell
Counsel for the City of Benbrook
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-04826

Dear Ms. Russell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 482450.

The Benbrook Police Department (the "department"), which you represent, received a request for the incident report and video recording pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested incident report. To the extent the requested incident report existed and was maintained by the department on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(b) of the Government Code, the

governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). The department received the request for information on December 31, 2012. You note the department was closed on January 1, 2013, for a holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by January 15, 2013. The envelope in which the department provided the information required by subsection 552.301(b) was postmarked January 17, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The department raises section 552.130 of the Government Code, which can provide a compelling reason to overcome this presumption. Therefore, we will address the applicability of section 552.130 to the submitted information.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1), (2). The submitted recording contains the license plate numbers of vehicles that do not belong to the requestor, which are excepted from disclosure under section 552.130. The audio portion of this recording is intertwined with the video portion of the recording. You inform us that the department does not have the technological capability to redact the motor vehicle record information at issue from the recording. Accordingly, we agree the department must withhold the submitted video recording in its entirety under section 552.130(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive style with a large initial "C".

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 482450

Enc. Submitted documents

c: Requestor
(w/o enclosures)